

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0780/P1dn
MGD:jld:pg

December 16, 2002

Kevin:

1. In order to penalize second or subsequent offenses in the same way as first offenses, I had to address what appears to be a drafting error in 2001 Wisconsin Act 109. Under the current version of s. 961.48 (as well as under Act 109's revisions of it, which take effect on February 1, 2003), many second offenses are subject to higher penalties, so in keeping with your instructions I needed to create an exception in that statute for possession of methamphetamine. But, if that exception had only referred to possession of methamphetamine, it might support the position that s. 961.48 applies to other simple possession felonies — even those based on the application of a separate penalty enhancer for repeat offenses. *See, e.g.,* s. 961.41 (3g) (c) (making the second offense for possession of cocaine a Class I felony). I believe that that result would be inconsistent with the intent of the Criminal Penalties Study Committee, which appears to have intended to provide higher penalties for second simple possession offenses within the possession statute itself and to have the higher penalties there apply only to three types of offenses (s. 961.41 (3g) (c), (d), and (e)). *See* Criminal Penalties Study Committee Final Report at 79, http://www.doa.state.wi.us/docs_view2.asp?docid=42 at 98. Therefore, the new exception in s. 961.48 refers to all of the simple possession felonies.

2. In many respects, I treated the possession of methamphetamine under this bill in the same way that it had been treated by 1999 Wisconsin Act 48. For example, if a person is convicted of possessing methamphetamine, the bill requires the court to order an assessment of the person's use of controlled substances. *See* s. 961.472 (2) (which, until February 1, 2003, includes a cross-reference to s. 961.41 (3g) (dm) — the methamphetamine prohibition repealed by 2001 Wisconsin Act 109). Is that okay?

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867